

MINUTES

of the

COUNCIL OF THE COUNTY OF MAUI

March 12, 2016

THE SPECIAL MEETING OF THE COUNCIL OF THE COUNTY OF MAUI, STATE OF HAWAII, WAS HELD AT THE LANAI SENIOR CENTER, 309 SEVENTH STREET, LANAI CITY, LANAI, HAWAII, ON SATURDAY, MARCH 12, 2016, BEGINNING AT 1:00 P.M., WITH CHAIR MICHAEL B. WHITE PRESIDING.

CHAIR WHITE: The special meeting of the Maui County Council shall please come to order.

Mr. Clerk, please call the roll.

ROLL CALL

PRESENT: COUNCILMEMBERS GLADYS C. BAISA, ELEANORA COCHRAN, DONALD G. COUCH JR., S. STACY CRIVELLO, G. RIKI HOKAMA, AND CHAIR MICHAEL B. WHITE.

EXCUSED: COUNCILMEMBERS ROBERT CARROLL, MICHAEL P. VICTORINO, AND VICE-CHAIR DONALD S. GUZMAN.

COUNTY CLERK DENNIS A. MATEO: Mr. Chair, there are six Members present, three excused. A quorum is present to conduct the business of the Council.

CHAIR WHITE: Thank you, Mr. Clerk. Let's proceed with public testimony.

COUNTY CLERK: Mr. Chair, proceeding with, with presentation of testimony on the agenda item.

Individuals who wish to offer testimony, please sign up at the table in the back of the room. Testimony is limited to the item listed on today's agenda.

And pursuant to the Rules of the Council, each testifier is allowed to testify for up to three minutes with one minute to conclude if requested. When testifying, please state your name and the name of any organization that you represent.

Mr. Chair, we have, we have just one individual who have signed up prior to the meeting. We'll be calling up Mr. Ron McOmber.

CHAIR WHITE: Thank you, and, and if Mr. Reilly and Mr. Gima would like to come and provide additional testimony, we're certainly welcome to hear that as well.

PRESENTATION OF WRITTEN OR ORAL TESTIMONY

MR. RON MCOMBER:

My name is Ron McOmber, resident of Lanai, a member of the CPAC, of both CPAC's, the 1998 and this present one. I don't know what more I can add to it except what bothers me more than anything else is the amount of maps and drawings in this document. Does that mean that its been accepted across, they can go ahead and, and apply for these permits or do that. Or do they have to go through the regular process. I mean that just shows a bunch of maps of what they want.

Some of them are scary. Some of them are never going to do, never going to move the sewage treatment plant. They're never going to put desal, unless they have a change of heart. And it's, and matter of fact the desal plant is not in there, cause that was removed beforehand.

It's a shame that the Lanai residents put this time forward and sat at a table for nine months, five of us that I know for sure was at every meeting. We had union people that was supposed to be here, never came to a meeting unless their union bosses in Maui told them to be there and then they sit in the, in the gallows and text them, tell them what to say. We, they can't even speak without being told by somebody else how to speak. They're residents of Lanai.

We had a bank president here at First Hawaiian Bank move to Maui, so, I mean move to Honolulu, so we lost another seat. We had, one night we didn't even have a quorum, we had to call people to come and make a quorum. And the ones of us that sat through every one of these meetings and answered all the questions of the Planning Department, and this is what we get for it.

This is not, this is not comfortable with me. I, I work, we worked too hard on this; we love this island more than anybody else can understand it. And, fortunately, Molokai is not singly owned by one person, they'd have the same problem because they would develop it and do just what this guys doing.

So on behalf of the CPAC and whatever, I, I say we go back to the original community plan. It was simple, easy to read. And the stuff that they jerked out of there like the extension of the runway, you cannot put that runway any closer to the city.

I understand that Pulama, pretty soon is going to go before the Planning Commission and ask for two heliports, which are not in this plan. So, just, it's amazing what's going on folks. Lanai is going through a terrible transition right now and we're being bombarded by, I don't know what, a lot of money. And I hate to see what's happening, I'm glad I'm getting old, I won't be here to see the final thing of this.

Thank you for coming to Lanai, I know it's, it's a Saturday, and I appreciate you folks being here. But I, I ask that you go back to the original plan and let's, let's go back to that or reconvene the CPAC and let us talk about this in public. Thank you very much.

CHAIR WHITE: Thank you, Mr. McOmber. Members, any questions for Mr. McOmber. Seeing none, thank you very much.

And Mr. Reilly would you like to provide additional testimony?

MR. PAT REILLY: No, sir.

CHAIR WHITE: Okay, thank you.

And Mr. Gima, would you like to provide additional testimony. And we'll keep staff away from the chair.

MR. BUTCH GIMA:

My name is Butch Gima. The only thing to, to add is if, it'd be helpful to know if you guys are going to answer the questions I posed in my first testimony. And, if you do, then could you explain the decision-making process on the Council. Are you guys going to make a vote today, or can you, can you explain to the audience the concept of first reading, second reading, and how a final decision is made.

And whether you will take into consideration testimony that was provided today and whether you guys will be making any modifications. Because if you're not going to make any modifications and we're just going to go through the motions, then I think that's very insulting to your community. Thank you.

CHAIR WHITE: Thank you, Mr. Gima. Members, any questions for Mr. Gima.

Seeing none, Mr. Clerk.

COUNTY CLERK: Mr. Chair, we have one more testifier.

Kuilani [*sic*] is her first name, if you can please come, please come on up and please pronounce your last name for--

MS. KAUILANI QUINONES:

Kaui Quinones.

COUNTY CLERK: Thank you.

MS. QUINONES: Hi, yeah, I'm not exactly sure why I feel like testifying today, but my na`au is making me move, so I have to go with that. First of all, I'd, and I had asked the lady--

COUNCILMEMBER COUCH: Please speak into the mike.

MS. QUINONES: First of all I had asked what is the normal attendance to these. Pretty slow turnout and I just happened to find out about it last minute. You know, as a, I say a younger generation that's here, here on Lanai, I'm saddened to find out that we don't have a turnout as far as what's going to happen in the community. So my question, I guess, to the Maui County Council or whatever is what efforts are you making to reach out to younger or to the future of Lanai. Because it's one thing to, to you know, to lock into the people who've been doing this for years and years, but where is the future of it. Are there efforts, or is there a program in the schools to, to actually, who's actually going to be around to sustain the island. That's one question . . . my questions okay and then you guys.

CHAIR WHITE: Well actually, you're here to provide testimony, we don't necessarily answer questions.

MS. QUINONES: Oh, questions, oh I'm sorry, I thought, I thought--

CHAIR WHITE: Yeah, no, no, no problem.

MS. QUINONES: --no that's after, I'm sorry, my bad, my bad.

CHAIR WHITE: No, it's not your fault.

MS. QUINONES: I'm sorry, I'm new to this, I'm new to this.

And then the other thing is, I guess, well, yeah, I'm just, I'm saddened to see that there is not, and it's not you guys fault, it's not, you know, but I guess it's something that as I've been living here on Lanai for the past two years and everything is such a, everybody knows this is a real small community, everybody knows everybody, what's going on. And I think that, you know, there's so much potential rather than doing, cause I've been on other islands, testify on other things, but to see that, oh, we have such an opportunity here to bring out to the communities, to the schools, to, you know--

CHAIR WHITE: You, you need to speak, speak into the microphone because this is being recorded.

MS. QUINONES: Okay, sorry, I'm sorry.

COUNCILMEMBER CRIVELLO: And you got to talk to--

MS. QUINONES: Oh, I'm sorry, oh yeah, my other thing was is it possible since we have kupuna here, instead of him having to come to the mike, just bring the mike to the guy. Maybe a possibility for the future, that's what I would like to see because we're, I mean, I understand in large facilities you can't do that, but you know, here on Lanai, do things a little bit different. So that's something that I was going to testify about that I'm disappointed about.

Okay, I mean other than seeing the guy pull the chair out, I couldn't, to think that was . . . what's happening here, you know what I mean.

So, for me, I was just, I don't know, I'm sorry to just be rambling on but I just felt like I had to say something about this stuff.

CHAIR WHITE: Thank you very much. Any questions for the young lady. Seeing none, thank you.

Mr. Clerk.

COUNTY CLERK: Mr. Chair, there is no further individuals who have signed up to testify this afternoon. If there is any individuals wanting to provide testimony this afternoon, please proceed to the testimony location at this time.

Mr. Chair, there are no further individuals who wish to offer testimony.

CHAIR WHITE: Thank you, Mr. Clerk.

Members, without objection, we'll close public testimony.

MEMBERS VOICED NO OBJECTION.

CHAIR WHITE: And we've received written testimony, I don't know whether we need to receive it again in this meeting. Without objections, we will enter it into the record.

MEMBERS VOICED NO OBJECTION.

CHAIR WHITE: Thank you.

THERE BEING NO OBJECTION, WRITTEN TESTIMONY
RECEIVED FROM THE FOLLOWING WERE MADE A PART
OF THE RECORD OF THIS MEETING:

1. Deborah dela Cruz;
2. Kamana`opono Crabbe, Office of Hawaiian Affairs; and
3. Jim Smith.

CHAIR WHITE: And without objection, we'll close public testimony.

MEMBERS VOICED NO OBJECTION.

CHAIR WHITE: Thank you.

Mr. Clerk.

DEPUTY COUNTY CLERK: Mr. Chair, proceeding with the ordinance for first reading.

ORDINANCES

ORDINANCE NO. _____
BILL NO. _____(2016)

A BILL FOR AN ORDINANCE AMENDING SECTION 2.80B.070, MAUI COUNTY
CODE, TO ADOPT THE UPDATED LANAI COMMUNITY PLAN

CHAIR WHITE: Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair.

I MOVE THAT THE PROPOSED BILL ENTITLED "A BILL FOR
AN ORDINANCE AMENDING SECTION 2.80B.070, MAUI
COUNTY CODE, TO ADOPT THE UPDATED LANAI
COMMUNITY PLAN" BE PASSED ON FIRST READING AND
BE ORDERED TO PRINT.

COUNCILMEMBER BAISA:

MR. CHAIR, I SECOND THE MOTION.

CHAIR WHITE: We have a motion from Mr. Couch, with a second from Ms. Baisa.

Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair.

Beginning on January 15, 2015 and meeting nine subsequent times, your Planning Committee met to review a proposed bill to adopt an updated Lanai Community Plan, including the decennial revisions required by Chapter 2.80B, Maui County Code.

Your Committee met here on Lanai to receive testimony on the Lanai Community Plan on January 28, January 29, and June 23, 2015. Your Committee recognized the efforts of the Lanai Community Plan Advisory Committee and the Lanai Planning Commission in providing recommendations on the updated community plan.

Your Committee was careful to balance the recommendations of the advisory bodies, the public, the State and County agencies, including the Planning Department. Your Committee was sensitive to concerns expressed in public testimony that some

revisions to your community plan are not consistent with the recommendations of the advisory bodies.

However, I would like to note that the subject language that has been, that has drawn significant attention first appeared at, at my recommendation in a version of the plan presented to the Planning Committee on November 17, 2015. Subsequently, the Department of Planning commented on the language in an email to the Planning Committee on December 15, 2015 in written correspondence dated December 29, 2015 and the Planning Committee meeting on January 7, 2016.

The updated Lanai Community Plan represents your Committee's collective decision on how to best balance the competing concerns. Your Committee has accordingly approved, modified, or amended some recommendations of the advisory bodies. The majority of the recommendations made by the advisory bodies are unchanged. The advisory bodies are a key part of the Council's policymaking process for community plans, but the Council is ultimately responsible for the Lanai Community Plan and must approve a version it determines best serves the community interest.

I also wanted to recall and, you know, this one's a tough one, but there were plenty of hours put in by both the public and the Departments, and, you know, this, this plan is dedicated to the lives of the folks that were greatly affected on the plane crash. This, this is a very, very costly community plan. And so, I just want everybody to remember that this is dedicated to those folks.

I respectfully ask for the Council's support to pass the proposed bill on first reading and now that the public hearing has been held. Thank you, Chair.

CHAIR WHITE: Thank you, Mr. Couch. Members, further discussion?

COUNCILMEMBER HOKAMA: Thank you, Chairman.

Just a few comments, Members, regarding this version of the community plan. And I want to thank everybody that decided to show up on a Saturday, it's a busy day for many communities like ours.

And for those are, that are not ma`a with process, I can tell you County has made efforts through the, third, this is the third community plan for most of us. So I can let you know that we have invited in the past, and have designated high school students to participate in the process, two of um. They choose to come when they want, and most of them choose not to participate because of conflicts of school events and other things.

But they have always been invited to be part of, of the process to participate and give us their point of view in where they would like to see Lanai to go in the future. So at no point I will tell anyone in this room that our young people were not asked to participate to help move this island forward. They are always, were part of the process and their level of involvement was left up to them, okay. But they were always included and welcomed to participate. Just so everyone is clear on that.

It's been a very challenging effort for all the groups that is working on this update and I will acknowledge that. From Department, to Councilors to community members, to those with special interests, those with last minute interests, by testimony I see. But what I will tell you is that it's interesting, this plan has not brought this community together, this version. That is not, in my mind a good thing. I, I feel there is more divisiveness. I feel this community has gone backwards in the last 18 years; it's not as healthy as we were once. We're not as tight as we were once.

And I'm going to be the first to tell you, I miss pineapple. This was a hell of a great place to grow up and live. I can tell you I'm not that, quite happy with the current state of affairs of our community and our island. And I will say, I'm not very happy with the current state of affairs of this version of the community plan, either, Members and to my fellow residents.

I prefer at this point in time to keep the existing plan and not support the revised plan, unless we are going to consider amendments to take care of the community's concern from both the Advisory Committee and the Planning Commission. So, I'm being upfront with my colleagues from the other districts of this County, that I for one in this current form will not support and vote for this plan.

And so I'm open to comments from the other Members, Mr. Chairman, and at the appropriate time, if I feel . . . I will make a motion regarding a revision. Thank you.

CHAIR WHITE: Thank you, Mr. Hokama. Members, questions or comments.

COUNCILMEMBER CRIVELLO: Thank you, Chair.

And, you know, sometimes as we recognize that we represent all of Maui County, and, and, out of respect for what we call "am I from this ahupua`a, or am I being a maha`oi" just being who I am and where I come from.

But, as I was out there at the restaurant, one of my dear hanai was sitting on the table with me and mentioned, and he's born and raised on Lanai and he says, you know, Aunt, we cannot have all the silts or whatever flow into our ocean. And, and

once all these things is closed off, we're, we're done as subsistence. So I'm not sure what's added in there, but I note that, and I'm just commenting on this and I, I will follow the lead of your representative, or our Councilmember from the island of Lanai.

But one of the things that I, I note here where this kamaaina was talking to me about on page 27, of Chapter 7.6, where OHA recommends that to add to that last portion of storm water drainage that "Stormwater runoff and erosion can negatively impact soils, fishponds, wetlands, coastal waters and reefs. Siltation of reefs and coastal waters can have detrimental effects on fish, limu, and other ocean resources upon which the Lanai community depends for subsistence fishing, gathering, and other cultural practices." I apologize, I'm not part of the Planning Committee and we now tend to address certain matters that are on this community plan for your island.

CHAIR WHITE: Thank you, Ms. Crivello. Members.

Ms. Baisa.

COUNCILMEMBER BAISA: Is this alive. Yes, it is. I am a member of the Planning Committee and have spent a whole lot of time paying attention to what is going on with the development of community plans. And this being the first one, it's kind of very important because if we don't do the first one, except, you know with acceptable result, then I'm kind of worried because we have a whole bunch of others that are coming behind. And unfortunately, this plan being the first has been very difficult. And it has gone through some really serious issues. You know the unfortunate accident that we had with the plane and the loss of people, loss of staff, of course put it back. And so it's taken longer and longer to try to get it to today.

And, I have to say that I'm kind of disappointed because it was my maybe, I don't know, I just wasn't, didn't get it. But my understanding was that we were pretty much okay with it except for one item, which we have before us today. And today I'm hearing a whole bunch of other things. And my question is when are we going to address what it is that we feel we have to address or, or are we just going to go on, and on, and on, I don't see the end in sight and there has to be one. So, this is where I find myself today, I was real comfortable that we were going to deal with an amendment and then we would be through but that's not what I'm hearing. Thank you.

CHAIR WHITE: Thank you, Ms. Baisa. Further, discussion?

Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair.

I know one of the testifiers was concerned about the, how the process works. Just about first reading and second reading, etc. This is the first reading of the actual bill that would make the community plan law. It would then go to print and would be published in the newspaper, the fact that we have this bill, and then at a subsequent Council meeting, I think we're looking at April something would be the second reading, and then once it passes the second reading it becomes law if the Mayor signs it.

At any of these readings, we can make changes. So some testimony was taken today, there is potential changes that can be made if, if Members want to make the changes.

I just want to say that, you know, we had a Committee meeting here on the 23rd of June, I believe, something that we'd never done, or the Council, I don't think has ever done. We made it less formal than it normally is and we were able to try and get within what we could for the Sunshine Law, get the members of the CPAC to come and talk to us and, and respond to the changes we were making. And it was my impression at the end of that meeting that everything was a little bit better because we were able to talk story with you folks.

I understand about the language and I see Councilmember Hokama has submitted a potential amendment to that and I'm fine with, with discussing that. And if Member Crivello is fine with adding that stormwater runoff language, I, I don't think anybody will have a problem with that, if those are the issues. If there are other issues, again, we can certainly bring those up and discuss them.

We typically don't do that at length at a Council meeting, but this is a special Council meeting and we're here, so I, I have no problem with doing that, that's totally up to the Chair of the Council. So, with that, I'm, I'm certainly open to making amendments to this. I have no ownership or anything as far as the exact copy, so if the Chair doesn't mind, we can do a little bit of Committee work if there are some amendments that need to be discussed.

CHAIR WHITE: Thank you, Mr. Couch. The Chair has no problem considering amendments at this particular time and if anyone else has any.

COUNCILMEMBER COCHRAN: Chair.

CHAIR WHITE: Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair.

And, yeah, and I concur if, so thank you for allowing amendments to be made today, I know it's unusual for full Council to be doing that but again this is an unusual circumstance and a special meeting at that.

And I did have a chance to go through all the proposed additions by OHA in this four-page handout, two-sided. And I think majority of this stuff having, being the Chair of Infrastructure, it really is, I don't know broiler plate, but it's quite consistent with things that we all like to live by, and make sure are put into protection any type of documents that we tend to put forward.

So, I thank Ms. Crivello for bringing up the one point, but I went through them all and I highly recommend and would like to see this language inserted into the documents where asked. It doesn't change a whole lot of things except of in the sense of protecting especially public access, subsistence, gathering rights, and what have you all having to do with our Native Hawaiian customary practices.

So, if there is a time, I know it's quite a bit Chair, but if there is an opportunity somehow to state that in one, one fell swoop motion or whatever, I don't know how we want to do that. But those are my comments, Chair, at this point, and how I see things. And looking forward to the discussion that it looks like Mr. Hokama has, would like to present also.

CHAIR WHITE: Okay, thank you, Ms. Cochran. Before we move on, I'd like to ask the Department when they received, to what degree was OHA involved early in the process because I, I note that this letter from OHA is dated March 12, 2016, which is a bit late in the game.

MS. MARY JORGENSEN: Thank you, Chair.

OHA, this is Mary Jorgensen with the Department of Planning. OHA did not participate during the CPAC process or during the Planning Commission process. And I just now saw this letter that, that came through, we were on Molokai on the tenth, so this is first time looking at it.

CHAIR WHITE: Thank you, that was my concern.

Yes, Mr. Couch.

COUNCILMEMBER COUCH: I can also answer, they didn't come to the Planning Committee either until the very last meeting they submitted this same letter. I think it was after the last meeting actually. So, it's, it's, this is all last minute stuff. I, I think it's good stuff, if, if the Members are amenable to adding this stuff, I'd just request that the Department has some time to take a look at it and see how that affects the plan.

CHAIR WHITE: Yeah, I would agree. And my understanding it was never brought to, it was never brought to you all in the CPAC or the, or the Lanai Planning Commission. So, okay.

COUNCILMEMBER COUCH: Mr. Chair.

CHAIR WHITE: Mr. Couch.

COUNCILMEMBER COUCH: There, there is another possibility too, is that if we pass it out on first reading today, the community gets a chance to take a look at this and make their recommendations. I would caution them very carefully not to meet as, you know, only two of you from each, either the Planning Commission or the CPAC together. Don't, don't make a meeting unless it's a noticed meeting.

So, anyway, to take a look at this, see what changes they would prefer to make, and then have the Department see what changes they can prefer to make and we can, on second reading we can make some amendments. We would then have to wait for one more Council hearing if we do it at second reading. So, that's another possibility.

CHAIR WHITE: Okay, Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, the comments from the Office of Hawaiian Affairs, I would say for me is more pertinent in an overall general plan policy statement, than in a specific community plan. Because if you look, they are going back and referring to what we did in 1978 at the State Constitutional Convention. So this is constitutional language that applies to every County, every island in the State of Hawaii. It's not just about the Lanai Community Plan.

And so for me to just say it should be in the community plans, I don't think that's the appropriate place for us to consider it. I think it's in the General Plan's overall policy statement would be appropriate that from a County's overall perspective we support traditional access, customary harvesting rights, access rights. I think that's where it's the best, appropriateness for us to consider this policy, Chairman and Members.

COUNCILMEMBER COUCH: Mr. Chair.

CHAIR WHITE: Any, any other comments on the OHA letter.

Mr. Couch.

COUNCILMEMBER COUCH: Yes, and, and I agree with Mr. Hokama. The issue, in part of the 2.80B situation is that we have a Maui Island Plan that we took two years to come up with. It has these kind of policy statements in it. But it was only for Maui Island.

The intent was, and it was discussed extensively at the Maui Island Plan that at the Lanai Community Plan time and at the Molokai Community Plan time, that would also include their island plan. So it was going to be both at the same time, combined. That's why it is a bit thicker than it normally would be because we, we, the stuff that it took us two years to do on Maui, we added similar language in the community plan.

So I'm thinking that if we were to put this language in an overall document, it would probably be in the policy plan, Countywide Policy Plan, because that is Countywide. We can put that language in and I'd be happy to, if Ms. Cochran wants to introduce that or if any of the Members want to introduce that, great. If not I can certainly introduce it too, but that would come to the Planning Committee and that language could go into the overall Countywide Policy Plan. So that, that's a potential too.

CHAIR WHITE: Department?

MS. PAM EATON: Chair, thank you. Pam Eaton, Division Chief for the Long-Range Planning Division. I was hired; actually, the day after this plan was submitted to County Council. However, I have been intimately involved in the Molokai Community Planning process, and I would like to ask a comment because OHA is a bit more engaged in that process. So whatever you do want to do for Lanai, cause we have tried to keep things consistent, you know between the islands as appropriate. Almost to the letter, they submitted the same thing, and back in November and at each, and at each meeting. So, I can tell you that whatever you do on Lanai, with steps such as this, we would be interested on Molokai.

Thursday night when we were at Molokai for a long, long time, we did go through the OHA letter because we have, we have completed the review of the plan and so then we then looked at public testimony submitted in terms of . . . what can we do to include and we did go through every single thing.

And I know there was some concern, and I talked at length with the, during the meeting with the OHA braddah, lawyer, about the water section, that little bit of sensitivity because much of the stuff in the water section will be covered in the Water Use and Development Plan. So I, you know, they said no problem and then we'll go back and talk about it.

I spoke with the Water Director yesterday, just in terms of sensitivities with water rights and ongoing litigation and so forth. So we are very interested in terms of how this is going to be decided, but we also felt that a lot of this, like Chair, I'm sorry Councilmember Hokama said is covered in the 2009 Countywide Policy Plan and a lot of it is also covered in the Maui Island Plan as well.

CHAIR WHITE: Further discussion.

Mr. Couch.

COUNCILMEMBER COUCH: Yeah, okay so, most of this language that they would like is in the Countywide Policy Plan and Maui Island Plan.

MS. EATON: No, not most of it. I'm saying in some cases and a lot of what OHA wrote we had already put in the Molokai Plan.

COUNCILMEMBER COUCH: Oh, okay.

MS. EATON: We had covered that. But I'm saying if you, you know, it'd be very interesting to see how you do want to handle this because we showed exactly where we had particular issues and policies covered in the Molokai Community Plan already.

COUNCILMEMBER COUCH: Okay, my question to the Department then, Mr. Chair, would be is this some, is this language that probably would fit best in the Countywide Policy Plan.

MS. EATON: I, I think it is language that should be in the Countywide Policy Plan. I'm thinking of very specific instances and Councilwoman Crivello could also comment where there is some very unique situations on Molokai we tried to address those. But I think it is language that is appropriate, should be in the Countywide Policy Plan.

COUNCILMEMBER COUCH: Okay, thank, thank you, Chair. I would, while you're recovering there, I would then say this is something that maybe we can, we can submit to you as a, an item that, to discuss at the Countywide, to add to the Countywide Policy Plan.

CHAIR WHITE: Members, is everyone comfortable with that process? Okay, that deals with the OHA issue and Mr. Hokama, if you want to share with us your amendment.

COUNCILMEMBER HOKAMA: So, Chairman, so we're all clear and our Lanai residents are clear. You're going to refer the subject to the appropriate standing committee then. There is no need for any other communications. Okay, thank you.

One, if you look at my proposal, I'm going to adjust it Members. So you have a, have made copies, we also made additional copies for our residents so it's in the back by Ms. Murashige from our Clerk's Office, if you would like to see it.

I'm going to make a motion Members, to make an amendment regarding the Appendix. And let me just say it this way.

I'M GOING TO MAKE A MOTION WHEREBY I'M GOING TO
ASK TO DELETE THE CURRENT APPENDIX 9.2, AND
REPLACE IT WITH APPENDICES 9.1 AND 9.2 THAT THE
LANAI PLANNING COMMISSION AND THE LANAI
COMMUNITY PLAN ADVISORY COMMITTEE
RECOMMENDED IN THEIR VERSIONS OF THE COMMUNITY
PLAN, AND THAT WOULD BE MY MOTION.

CHAIR WHITE: Thank you. Do we have copies?

COUNCILMEMBER HOKAMA: The copies is only for, with the addition of Appendix 9.2, Mr. Chairman. I'm asking that Appendix 9.1 also be part of the motion to amend, but I don't have 9.1 currently.

CHAIR WHITE: Members, I, I think I would, I'd like to take a recess so we have, we can make copies of whatever. Pardon.

COUNCILMEMBER COCHRAN:

CHAIR, I SECOND.

CHAIR WHITE: Okay, we have a, we have a motion from Mr. Hokama, with a second from Ms. Cochran. The Chair would like to take a five-minute recess so that we can all get copies of the recommended changes. We'll be in recess, actually, recess at the call of the Chair.

(THE MEETING WAS RECESSED BY THE CHAIR AT 1:35 P.M., AND WAS RECONVENED AT 2:14 P.M., WITH ALL MEMBERS PRESENT, EXCEPT FOR MEMBERS CARROLL, VICTORNO, AND VICE-CHAIR GUZMAN, EXCUSED.)

CHAIR WHITE: This meeting will please come back to order. Members, we have been given a number of copies of the items that we requested before the recess, and I want to thank the staff for getting the copies made for us.

My intention is, because this is new stuff being presented, that we have resource people here that I would like to hear from if appropriate, or if people are, are willing to do so. So we won't be opening it up for public testimony but Members can ask for different resource people to come up and provide their perspectives.

Also, the Chair's a little uncomfortable doing, doing this kind of on the fly when there's pretty significant ramifications. And we want to make sure that we understand the, the consequences of the changes. So, we'll go through the discussion today and hear from everybody who we can consider a resource person. And if we can come to a level of comfort with the changes today we'll, we'll act on them, if not the Chair's intent is to recess this meeting to a later date and we've, we've checked and we have April 1, at 1:30 available. So, just to give you an idea of where, where the Chair is coming from.

So, with that I will turn it back to Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, thank you. And I want to thank our staff, Mr. Garneau for assisting myself in this amendment before the Members. So, Members, I'm going to make some adjustments as I have learned like our advisory people and our planning commissioners, depends which document you look at, you will find a different appendix designation.

So we use the version that we understood is what the Lanai Planning Commission version was used and in their version it's under Appendix 9.2 and 9.3, which is the copies you have received.

AND THE MOTION IS TO REPLACE THE CURRENT 9.2 WITH THIS TWO APPENDICES, AS WELL AS UNDER THE LAND USE VERBIAGE, IN THE SECOND PARAGRAPH TO DELETE THE LAST SENTENCE WHICH CURRENTLY STATES "UNLESS SPECIFICALLY PROHIBITED, THE USES PERMITTED BY ZONING AND THE STANDARDS APPLICABLE TO THE ZONING DISTRICT APPLY TO THE

CORRESPONDING COMMUNITY PLAN DESIGNATIONS." SO THAT WOULD BE DELETED, APPENDIX 2 AND 3 OF THE HANDOUT WOULD REPLACE THE EXISTING APPENDIX 2 OF THE CURRENT PROPOSAL AND THAT'S THE, MY AMENDMENT FOR THE MEMBERS.

And so I'll speak in support of this, you know I think one thing the Members can have empathy on is that this should be what it, we say it is, a community plan. This is not the department's plan, this is not the Council's plan, this should be the community's plan. And for me, I, I would like to see some of these changes because I think our community has matured enough, has participated in governance enough that for many of us this is our third community plan we're working on, this is not the first document we're working on.

And so I would say most of the members in our community are quite ma`a about this concept and this plan. We have been working on this for about 30 years, those of us that have stayed here and lived here as Lanaians.

Second, Members, I, I would like you to consider this because I think our community is very clear on where it would like to go. You know the current state of affairs is not healthy. Our businesses are hurting tremendously. This is one of the few times in our history that I can remember in the hundred years that my family's been here where the company actively competes against our family businesses. I find that to be quite disgusting.

Our families have fought hard and gone through the bad times of this island and they should be the beneficiaries of new activity, new opportunities for growth, ability now to have a return of their investment. These are the families that carried this island during the strikes, during work stoppages, and I have never seen our small businesses in such a dire situation. And I'm not a happy person who has invested my life on this island. And I would challenge anybody who says that for us that are, the Lanaians that this is a better time than what we grew up in. This is not a better time.

So stating that Members, I think part of my motion is one to give confidence back to this community that it, we acknowledge the direction they wish to go, we acknowledge their desires of what they want in their community plan. And so, I'm happy to make this amendment at this time on our community's behalf and I would ask for your consideration, Members. Thank you.

COUNCILMEMBER COUCH: Mr. Chair.

CHAIR WHITE: Mr. Couch.

COUNCILMEMBER COUCH: Thank you. And thank you, Mr. Hokama for the amendment. Just a question of clarification. At the current Appendix 9.2 has some language that you wanted removed, that's fine. Does that imply that you want to put the language that is, that is in there, the in lieu of repeating in detail somewhere in one of these two appendices because appendix, the new Appendix 9.3 has language and Appendix 9.2 does not have language.

COUNCILMEMBER HOKAMA: Yeah, I understand what you're saying. So Mr. Couch, Mr. Chairman, I would say I am happy to allowing appropriate staff do those language rewrites and, and put in the proper, appropriate appendix numbers to fill the intent of this amendment. I'm happy to allow legal staff and Planning Department to give their appropriate comments and allow them to do non-substantive rewrites. I'm happy to allow that cause I understand this is difficult for us to do it in, at this point in the process of a Council meeting. So I beg the Members indulgence in, in this time. But it's important enough that I feel I need to bring it up during this Council meeting.

COUNCILMEMBER COUCH: Thank you, and Mr. Chair, if I may ask the Department what the difference between the two versus the one are to help make a decision there.

CHAIR WHITE: Certainly, Department or Corp. Counsel, whichever.

MS. JORGENSEN: There's, this is Mary Jorgensen. There's a number of 9.2's and I believe the last sentence that "unless specifically prohibited, the uses permitted by zoning and the standards applicable to the zoning district apply to the corresponding community plan designations" was from the January 8, discussion. There has, there was since then, a, it, following that sentence--

COUNCILMEMBER COUCH: I'm sorry, sorry to interrupt but the question is you have Appendix 9 point, the new, the, the two appendices that Mr. Hokama wants to replace with the one. What are the differences there. I, I'm not, not concerned about the language, it's just why was in combined into one. It looks like these are, these are the same thing, but combined into one table.

MS. JORGENSEN: That was at the request of the Planning Committee in June of 2015. During the meeting when we were here on, on island, you looked at the two tables and thought it would be better combining them into one table. And then following that meeting various versions of it, of the combination were brought to the, the Planning Committee meeting in November, December, January, and even into February refining that combination of the, the original two tables into one table.

COUNCILMEMBER COUCH: Okay, and then I would like to hear from Corporation Counsel is, is there a difference between the two if we were to replace the one with the two.

DEPUTY CORPORATION COUNSEL MICHAEL HOPPER: Thank you, Mr. Chair. I'm a, I may be a bit lost here. I had two documents handed to me the copies, they say at the bottom of them one is a 9.2 and one is 9.3 and at the bottom they say "Lanai Community Plan - LPC Final Draft October 31, 2014". And, same with the 9.2.

The 9.3 that I see doesn't have any language that says, that, that I think there was a statement to delete the last sentence, I'm not sure if that's on either of these, I don't necessarily see a last sentence that talks about the "unless specifically prohibited" language. The last sentence on 9.3 that I have is "The State Conservation District is used to protect, etc." So that's a bit different. I don't see a last sentence on either of those that deal with them so I'm a bit concerned that I, I, we may be looking at different documents as a first step. I just wanted to make sure I have the right, the, the amendments were correct.

COUNCILMEMBER COUCH: Mr. Chair, if I may.

DEPUTY CORPORATION COUNSEL: Okay, that's not what I got then.

COUNCILMEMBER COUCH: Yeah, thank you. Yeah, what's being replaced is the one, the one Appendix 9.2 that has the language that Mr. Hokama wanted to strike. But the two, he's replacing with something that doesn't have any of that language and he just wants to put in appropriate language similar to the first sentence on the, the current Appendix 9.2 that doesn't have a date on the bottom. So--

DEPUTY CORPORATION COUNSEL: Okay, so the two documents I have that say "Lanai Community Plan - LPC Final Draft October 31, 2014" the 9.2 and 9.3, are those the documents that we are now replacing or is there a different document. Cause the one that the Chair just handed me is an Appendix 9.2 from a different date that has the last sentence being deleted but this is a, this is 9.2 that is not the ones that I was handed by Council Services staff, that's the one from October 31, 2014--

COUNCILMEMBER COUCH: Correct.

DEPUTY CORPORATION COUNSEL: --which is why I'm a bit confused.

COUNCILMEMBER COUCH: Okay, the way I understand it is the 9.2 that looks like this with no date on the bottom is being replaced with the two documents dated October 31, 2014.

DEPUTY CORPORATION COUNSEL: Okay and, neither, neither of those documents, if you're going to replace this Appendix 9.2 in its entirety including this text here, then there's no reason to, there wouldn't be a deletion of this "unless specifically prohibited" because that language is not in the 9.3 and 9.2. So that's why I was a bit confused there.

COUNCILMEMBER COUCH: Understood.

DEPUTY CORPORATION COUNSEL: If that's the intent.

COUNCILMEMBER COUCH: That's the intent, but my question to you is, these two appendices are now split, take the existing one and split it back into two. Is there any difference in the effect that these two have versus the single one that is, that is being replaced.

DEPUTY CORPORATION COUNSEL: Mr. Chair, I'm not sure why there were two separate appendices here. Maybe the Department can explain a bit about that, so I'm not sure what the comparison is, you know, it, it lists "Single Family" and then "Residential Districts". If the intent there is to say that's a corresponding district, then the updated version states that more clearly. I'm not sure what 9.2 is supposed to mean.

9.3 is basically what's in the community plan now and the, I think the issue with that was that the, the intention of that had always been, which was my understanding, to provide a general description of the district. So for example it says "Single Family", this includes, this includes single-family, duplex, and ohana dwellings period. And it doesn't list anything else. My understanding of that was it was intended to say that as a general description of the district, but not mean that anything other than a single-family, duplex, and ohana dwelling was allowed. Because in the zoning, it allows parks, it allows churches, it allows other things as well.

If the intention is to not allow anything else other than those, those uses listed, that's generally been a, a narrow interpretation that had not been applied. Which is why in, in the new table that the Planning Department came out with, my understanding was that they said "related and compatible uses" in their descriptions to explain that if there are related and compatible uses as listed in the zoning, then those uses are considered allowed by the community plan designation.

That, that was, I think if that's the Council's intention that these, these community plan descriptions, are they intended to only allow the things specifically listed there or are they intended to say if the single family, for example if the residential zoning allows other things, could other things be allowed in that district. And if it's to, and if

it's to allow other things that are allowed in that district, then the new language I think was intended to explain that.

But if, you know, the current language I don't think anyone had interpreted it as saying that this excludes any other possible uses that you could do. But because of that concern, that, that, that clarification was done in the new plan, which was my understanding there.

So I think it's up to the Council as to what uses are allowed but, you know, you would want to, I think be clear as to whether these are supposed to be the only uses allowed or if other uses that are similar as listed in the zoning are allowed. Cause, in order to make that determination I think reviewing what uses are allowed in the zoning would, would probably be an important consideration here and, and maybe a statement such as these are not intended to be an exhaustive list of all of the uses or something like that could, could be another way to, to do that. But I think that's the, one of the main differences in the two tables.

The two paragraphs of text in the current 9.2, I think were intended to clarify that as well. But I think the main issue was the, under the uses envisioned, and providing a corresponding table was to say that the uses envisioned included related and compatible uses as well as saying that if you match the zoning district and community plan district, that's the district you were intended to be zoned. If you were in that community plan designation and if you were zoned that district, you could do what the zoning allows, as long as you match that, the same district.

So I think that's what the, the change was between that plan, which is the current plan and the new language. But if there is an ability to clarify what's allowed in those districts listed, I, I think that would be an important thing for the Council to do one way or another.

COUNCILMEMBER COUCH: Okay. Thank you, thank you, Mr. Hopper.

And I understand what you're trying to say. Let me, let me see if I can paraphrase it a little bit. This, it's more clear in the existing 9.2 that, that is in the document we're looking at, as opposed to the two separate tables.

COUNCILMEMBER HOKAMA: Chairman, if I may.

So for Mr. Hopper and Mr. Couch, and I want to thank Mr. Couch for the question. The component, and I'm sorry if I confused everyone with the, the motion as I stated it. But the part about the language deletion is from the body of Chapter 9, it's not part of the appendices.

Yeah, in the body, if you look under Chapter 9, there is that paragraph where at the end it has that specific statement. So it's in the body of language, narrative of Chapter 9. You will not find it in either Appendix 9.2 or 9.3. This is part of the language of Chapter 9 regarding the plan. It says "9" and says "Land Use"

And it's that, it's last page, it's a half page of verbiage, three paragraphs. Yeah, sorry, I, I wish I could give--

MR. GIMA: 9-3.

COUNCILMEMBER BAISA: Correct.

MR. GIMA: Second paragraph.

COUNCILMEMBER COUCH: Just, just for Members clarifications, there are no page numbers after Chapter 9 on the document that was submitted, after Chapter 8. So it's the third page on, that's titled "Land Use".

COUNCILMEMBER HOKAMA: Correct.

COUNCILMEMBER COUCH: I see it, I found it. Thank you. It's the second to the last paragraph, the last sentence.

COUNCILMEMBER HOKAMA: But, you have another question, Mr. Couch? Because I was going to ask if you're done, for either Mr. Gima or maybe Mr. McOmber to give comment about what, if that was their intent with those appendices.

COUNCILMEMBER COUCH: That, that's fine, I, I just have, that would be good to hear from them, yeah.

COUNCILMEMBER HOKAMA: So, Mr. Gima or Mr. McOmber, as resource people who served on our Advisory and/or Planning Committee, Commission, was that the, your folks intent with those appendices. And that as Mr. Hopper, our Corporation Counsel mentioned that you folks were only being very narrow and specific that this would be the only things you folks would consider to be allowed in those categories or that's your primary focus.

And I think one of the examples was Single Family. Single Family I believe, we allow certain levels of parks or community parks, you're allowed a church, some quasi-public facilities, I believe. But in the zoning there is specific permitted uses and, and

maybe that's part of the things we need some comment and clarification on, on how you folks approached it, please.

MR. GIMA: Thank you. Butch Gima. The Appendix 9.2 and Appendix 9.3 with the date of October 31, 2014 at the bottom, yeah, were the ones that the, the CPAC was familiar with. And especially with 9.2, from the very beginning, and I think Mary can attest to this, that the CPAC members had a very difficult time differentiating between the different land designations. The State Land Use designations, the four categories; the Community Plan designations and the zoning districts.

And, I think we spent an inordinate amount of time trying to understand the differences and then on top of that the relationship between those three categories. So, this, this was very helpful to the, the CPAC members and having, having this at, you know 9.3 was just a supplement.

But this, this was a key in terms of, I think, CPAC members being able to deliberate on different parts of the land use chapter. They had, this had, was helpful to, I know for me. So I don't know if that answered your question but, in, in terms of why this was helpful for the CPAC members, that, that's the reason this is excellent.

COUNCILMEMBER COUCH: Thank you, thank you, Mr. Gima. Thank you for clarifying. No, no, no, don't sit down.

I guess my question is now you're holding up two separate appendices and what, what we did was combine them into one so it wouldn't be, you wouldn't have to go back and forth and it made more clear. Is that, are there, you have concerns with that. I mean, it's almost exactly, the exact same data in the tables. I understand you have a concern with the language above that, I have no problem with removing that language. But the actual data in the tables are, are, its basically combined the two appendices into one.

MR. GIMA: I agree there are a lot of similarities. I think, personally I like this because you have the State Land Use designations. And, again, the whole concept of making sure that zoning follows community plan designation is, is an important concept that, you know, we had to work under based on what the Planning Department's Long-Range Division staff instructed us to, to do. And so this, this document is, is helpful in conceptualizing that, that decision-making process.

COUNCILMEMBER COUCH: Right, and, but you're saying the other document does not. Without, I mean, remember take the language out--

MR. GIMA: You, you, you could, you could. I think the CPAC members and LPC members who went through the decision-making process using the current 9.2 could probably understand that. But if anyone else picks up the document, I think this is much, much more helpful than the current 9.2.

COUNCILMEMBER COUCH: Okay, if we added the State Land Use column in the current 9.2, would that clarify, would that alleviate your fears or your concerns about somebody else seeing it.

MR. GIMA: Yeah, I think, I think if you went landscape, and then--

COUNCILMEMBER COUCH: Yeah, yeah.

MR. GIMA: --and then did it that way, you could probably do it and, and get the best, get the best of both.

COUNCILMEMBER COUCH: Right and that's the idea is we're trying to--

MR. GIMA: But, but--

COUNCILMEMBER COUCH: --keep people from having to go back and forth and, cause some people will focus on one table and not hit the other and then that--

MR. GIMA: Well we may be splitting hairs because this is in the appendix section. The, the key, the key is going back to my question, does the language that you guys put in help strengthen our community plan or community?

COUNCILMEMBER COUCH: Yes.

MR. GIMA: Because we want, and then if that's the case then please explain that to us because there are a lot of us that don't get it, why that, that was changed and how it's going to be beneficial for our community. It's not, and it's not going to be whether we do current 9.2 or the original 9.2. It's, explain to us why that language was put in. It, once it's explained to us and we understand, we may say let's keep that language. But because you guys haven't explained to us, how in the hell can we make an informed decision on whether that's beneficial for our community or not. To, to date, to this minute it hasn't been explained to our community.

COUNCILMEMBER COUCH: Mr. Chair, if I may. Okay, all right, the reason they were combined is because if you take a look at this, the old 9.3 it has just a list of things that in single family, that appear to be, that's all that's allowed in single family. And I know, I'm pretty sure you guys, we, we even talked about, you want parks in a single-

family residential area; you want churches, maybe; nurseries. There's about nine different things that, that are allowed in single family that are not listed here.

Okay, and, and I'm assuming, and I think we talked about it in, in several of the Committee meetings with you guys that you were aware that yes you want parks in there, and yes you want whatever's allowed. And, and the bit about the zoning, and this, this ties into here, and this, Mr. Chair, if you may, if, if you could indulge me, I'm going to go over with what Ms. McLean talked about, community plans and zoning.

CHAIR WHITE: Yeah, I'm, I'm happy allowing whatever discussion needs to take place because we're, we're not here as often as we'd like to be--

COUNCILMEMBER COUCH: Correct.

CHAIR WHITE: --and so I'm happy to have whatever discussion is appropriate and necessary.

COUNCILMEMBER COUCH: Okay, so, when you, if we were to adopt this community plan in, in whatever form, there are some places that are now zoned ag, that you want as single family. Or there, there may be, not necessarily here, but there may be places that are zoned single family that you decide okay, now the community would like them to be commercial.

When that community plan gets passed, automatically there's inconsistencies because you say you want single family here but it's now ag. So the person can only do what is allowed in ag until they become consistent with the community plan. And in order to do that they have to go through the change in zoning process.

So, there's inherent inconsistencies as soon as you create a community plan. And so that's what this table is to, is here to say, is look if you said this is single family, these are the zonings you are allowed to have and nothing else unless you make a, you know, an amendment to the community plan. That's what these tables are trying to say is look under single family it includes single family, duplex and ohana dwellings as a generalization, and then under the table it also says the County zoning districts that are allowed under single family are R-1, R-2, R-3, and R-0.

Okay, so instead of having that going back and forth between these two tables, we added that column which took the information that's here, and put it in another column. And I, I understand you would like State Land Use Districts; I have no problem with putting that in there. That will help too, because, and there are, there are some instances where right now, State Land Use is ag, and you want to make it single family. You have to change that as well, you, whoever wants to, to change the

zoning. There is a lot of processes that have to go through, so it's good to have the, the State Land Use Districts in there.

So I think if, if those tables were combined, with, I mean it's the exact same language, and I'm fine either way. It just makes it easier when people who are not involved come and look at it and if they say oh, I can only, you know, and Mr. McOmber is trying to build a park in this, where it says single family and it says its only allowed single family and duplex and ohana dwellings. So, and that's happened, so I'm just letting you know that we're trying to clarify that those two tables combined make what the community, make the consistencies in the community plan.

MR. GIMA: Please understand that, you know, the Planning Department did a good job when we were going through the CPAC process that our kuleana was community plan designation. We weren't to touch zoning district, okay. So we were of the expectation that if we want this community plan designation, it was the Planning Department's kuleana to do that appropriate zoning districts and the processes that went through that, okay.

COUNCILMEMBER COUCH: Correct.

MR. GIMA: And, and so, whether everything was listed appropriately on this 9.3, that wasn't our kuleana, that was the Planning Department--

COUNCILMEMBER COUCH: Oh, absolutely and--

MR. GIMA: And so I reiterate my point that this is an appendix, the, the main, the main concern that the Community Plan Advisory Committee had in mind was we wanted to make sure that if we say this community plan designation and there is a list of zoning districts in this community plan designation that everybody follow the rules.

COUNCILMEMBER COUCH: Correct, and that's what combining the two tables will make it clearer.

MR. GIMA: Right.

COUNCILMEMBER COUCH: That was the intent.

MR. GIMA: And, and, and what threw us off is late in the game, this "unless specifically prohibited".

COUNCILMEMBER COUCH: And, and, I'm fine with agreeing with Mr. Hokama with removing that out.

MR. GIMA: Okay, okay.

COUNCILMEMBER COUCH: Did that, if that's the only thing that's, that's bothering you, it would be better to have the single table, single appendix and that language removed. I have no problem with removing that language.

MR. GIMA: Again, we don't want the tail wagging the dog.

DEPUTY CORPORATION COUNSEL: Just as a comment, also note, another difference in the table is the "uses envisioned" descriptions themselves. So the, the tables are basically the same as far as 9.2 listing the uses that correspond other than it doesn't have the urban, rural, agricultural State designations in them. But the "uses envisioned" section it, it contains expanded language from the uses envisioned like single family, the definition. Right now, the, the old 9.3 said "this includes single-family, duplex, and ohana dwellings". And so in the new table, it says "Envisions single-family, duplex, and `ohana dwellings, and related and compatible uses."

There are other changes made to other designations, and, and that's the, the issues that come up generally is if you're in a given designation what can you do. And so some of those are different in the table. So that's a difference as well. And I, and I think the, the new table is more accurate with respect to what's already going on in that you, you don't look at the community plan designation as defining every single use allowed in the district.

But I think it is important for the Council to look at these uses envisioned and see if this is an acceptable list. If it is, then the appendix itself would be acceptable. If it's not then you can look at changes, but wanted to note that that was, there was an additional change there. It's not just the information in 9.2 which is pretty much the same, but it's also expanding the descriptions in land use, in 9.3 of those districts.

COUNCILMEMBER COUCH: And, and Mr. Chair, I'd be more than willing to, like you said you were going to recess if, if we can come up with a discussion with the community plan guys independently, not as a group, but if we can come up with a discussion about how that table would look best, would work best for your understanding, Mr. Chair, I'd be happy to work with Mr. Hokama and the community and come up with a table that works for everybody.

CHAIR WHITE: Okay. The Department wants to say something.

MS. JORGENSEN: I just wanted to add that the CPAC worked extensively on what the future growth areas and those descriptions which is really the language in the, in

Chapter 9, that covers all the, the growth areas that have the mixed use and, and they are on the maps that are related to Chapter 9. That gives the specific intent that this community, what they wanted to see in those areas. So you're right, the table was used more as just a relationship between it and I would focus on what's in this future growth and, and that's what's going to drive, what will actually happen in those areas.

MR. GIMA: I, I hope you understand too, when we were going through the community plan process, if we had the charge back then to say you have to prohibit now, if you don't want something in, in this community plan designation. We weren't given, we weren't given that charge although--

MS. JORGENSEN: Yeah.

MR. GIMA: --yeah no, yeah that's why I think there were so many people who had a hard time with that language being inserted because we didn't have that option to so-call specifically prohibit certain zoning districts in a community plan designation. I think that's where people had a hard time.

MS. JORGENSEN: For mixed-use residential, you, in the discussions you specifically prohibited any, you asked many times, oh will this have any industrial in it for the mixed-use residential. So that was, the descriptions written in a, a positive of what you want, but it did, there is no, but then in the table it excludes light and heavy industrial under that mixed-use residential.

Another place which didn't get into this final plan was in the third resort. You prohibited rural lots less than five acres. But the, it doesn't say that, it says only allowing five acre or larger lots in that rural area with a maximum of 50 houses in that area. So by saying that language, it prohibited anything else and then the, the buffer that was around it was prohibiting growth.

And then we looked at the rural area by the stables. We pulled out all the zoning at your request, what exactly does rural have in there because you weren't sure about the lot sizes and whether you wanted to exclude something like you had done over on the third resort area where you had given that very specific size. And you looked at it and said no you'll leave that range. So you didn't prohibit something, but you did consider what would be, you know, what would occur there.

MR. GIMA: Yes, I agree with you.

MS. JORGENSEN: Okay.

CHAIR WHITE: Question for you.

MR. GIMA: Okay.

CHAIR WHITE: Looking at the current appendices, the, when you look through the list of uses envisioned. Do you see any, any specific sections that are concerning to you.

MR. GIMA: No, not specifically. As, as noted I think in the letter, the signatories were concerned about going from "indicate" to "envision". I mean there was some wordsmithing in there that was, couldn't, couldn't understand. But conceptually with, with what's included in that middle column--

CHAIR WHITE: The content was--

MR. GIMA: --yeah, content--

CHAIR WHITE: --was acceptable.

MR. GIMA: I think, yeah. And, and, the, the questions or opposition to the wordsmithing was not specific to that chapter. I mean throughout the process, there were changes made in, instead of saying "shall" then they used the more vague global term so it didn't nail down the County that they had to do that, you know. And so it's, it's that type of, it's that type of--

CHAIR WHITE: That's kind of what, that's kind of what we do--

MR. GIMA: Yeah, right. But, in, in respect to the, the people that participated in the process here, I think it's important to explain why that is necessary, not just do it and say you got to accept it.

CHAIR WHITE: Well, I'll give you one example and Mr. Hokama can, can jump in too. But, technically, we cannot commit any future Council to spending money. So if we put in a "shall build a road over here" we can't, you know, we can't really, we can't really pass something that says the County shall do that because if money has to be appropriated and so forth.

So there are areas where we, you know, we adjust the wording because we can't commit future Council's to a specific act that requires funding or, and we can't, any law that's passed today could be overturned tomorrow. And that's the way it is in the Legislature. That's the way it is in the Council, because we cannot bind future Council's to a specific responsibility.

MR. GIMA: Thanks for that explanation. It's the first time it's been explained to me in that manner and it makes sense.

CHAIR WHITE: Yeah.

MR. GIMA: I mean, that, that's all, that's all we want is an explanation.

CHAIR WHITE: Well we, that's, so a lot of--

MR. GIMA: We may not agree with it necessarily, but at least you explained it to us.

CHAIR WHITE: No, and, and believe me, we went through with Ms. Baisa long, you know, long discussions over the "shalls" and "mays" in the Maui Island Plan. But that's the reason because we can't, we can't bind future Councils.

So, it sounds to me like the, if we make some adjustments to this, and I think it makes some sense to take some time, let, let, let us put the State, change it to landscape put the State Land Use designations in. And you guys take another look at the wording because if the, if the conceptual content in the "envisioned uses" column are okay with you, then it sounds to me like we're pretty, we're pretty close.

MR. GIMA: Yes.

CHAIR WHITE: And I think, well, if you would like us to work on that, I think, I think it's appropriate for us to possibly take action on Mr. Hokama's other amendment, if you want to, if you want to separate them out or.

COUNCILMEMBER HOKAMA: So Chairman, hearing the discussion, and I thank you for allowing some flexibility in our parameters to allow community, give some comment. My understanding from hearing you and, and our Planning Chairman, Mr. Couch and thank you, Mr. Couch for being very open to community comment.

I would like to have the Members consider your option of recessing the meeting, allowing us to work on a draft that hopefully we can get good support not only from the community, but that the Members would feel comfortable supporting, but also allow us to use that time to review the current plan and whether or not we should place in certain current prohibitions of the current plan into the new, the new version. And if it makes sense, I'll propose it and if it doesn't make sense then I won't.

But I would like to have the Advisory Plan members and the Planning commissioners, if they feel it's still important to be a part of the new plan, then let's go work on a proposal that we can present ahead of time so that Councilmembers have a chance

to see before the meeting and develop their questions if they have concerns and we can deal with it at the, at the completion of the recessed meeting. I, I would request that, I would thank the Members for that consideration.

COUNCILMEMBER COUCH: Thank you, Mr. Hokama and I'd be happy to, to work with you on that. I, I, and you know I'm not Corp. Counsel, but I'm, I can already see him think, be very, very careful of the Sunshine Law. So we would like to work with somebody on that and I think certainly you and, and maybe somebody from the Planning Commission as a, individuals and I think that's something that we can work on.

CHAIR WHITE: Okay, so if I'm. Yeah.

COUNCILMEMBER HOKAMA: I have a question of clarification for, through the Chairman, to Mr. Hopper.

So just to give us guidance on, on governance and process, Mr. Hopper. If, let's say we have a draft proposal that Chairman Couch and I come up, so it's only two Members. And, Mr. Couch says you know what, this is a draft, it's a work document, it is not a final version, and we mail it to members of the Lanai CPAC and Lanai Planning Commission, just saying this is a draft that, you know, I'm considering. Is that an issue. Which is a communication of information, I'm not asking them for anything but just, we're just saying this is a proposal and we making you aware of it.

DEPUTY CORPORATION COUNSEL: Well, thank you, Mr. Chair.

The Lanai CPAC is still in existence because it's still a body. So one option and, and I don't know how possible it is, is if you want to actually, if the intention is to ask the CPAC for comments on something, they still exist, so you can actually ask for comments on a proposal. But the appropriate action for them rather than having individuals meet, discuss, and send back a comment is to actually schedule a meeting of that body. Post a meeting with an agenda, with testimony, and then they can provide you with comments.

It's most likely the reason that the CPAC's are considered to be in existence up until the time that the Council adopts the plan. That is an option available, you know. As far when that would be, or what that does to the timeline for the plan, which may need another extension by resolution in order to meet that deadline, I don't know. But I think that is a preferable action to, to sending it to the members separately, and to not have a meeting.

I think that the best course of action would be for the Lanai CPAC to have a agenda posted meeting with, you know, six days in advance, the way that they had had their meetings in the past, if the intention is to get a comment, comments from them as a body.

COUNCILMEMBER HOKAMA: And I thank you for that. And again because we working under some time constraints, as I understand it from Chairman White and Planning Chair Couch, my question is about just sending it to members of the commission and the advisory and saying this is something Council may consider. And if you have comments, you can testify back on April 1, at the reconvened meeting of the Council. Would that be an issue, Mr. Hopper.

DEPUTY CORPORATION COUNSEL: If it, that to me a bit sounds like a public notice. You could provide not only to the, those individuals, but you could also provide it to the public in general if it's a notice that this is, this is something that we're going to discuss at a full Council meeting. It should not be an indication that you should meet and deliberate on this with each other because again that body is still subject to the Sunshine Law.

If it is a Council communication to the general public and you include, you know, CPAC member as, as part of the mailing list, I don't necessarily see that as a problem. We may want to look at that. But again it shouldn't be anything that construes an idea that they, they should meet and discuss the item outside of an agendaed meeting.

COUNCILMEMBER HOKAMA: Right, right.

DEPUTY CORPORATION COUNSEL: Another option for Council is to adopt a resolution to extend the time and then have that meeting, if that's a major concern of the Council. Those are all options available.

COUNCILMEMBER HOKAMA: Thank you. Chairman, I just wanted to make the Committee aware of some of the limitations we are under on how we can communicate. Even in an open situation, we have restrictions on how to communicate in one open meeting, so I just wanted people to be aware of what we are required to provide in advance.

CHAIR WHITE: Thank you, Mr. Hokama.

The challenge is not as much with us as it is with you all, the CPAC and, and the Planning Commission.

MR. GIMA: One question before I sit down. Is the April 1, meeting on Lanai.

CHAIR WHITE: No, it's going to, we have a regular scheduled Council meeting on, on Maui.

MR. GIMA: Okay, okay, thank you.

COUNCILMEMBER COUCH: Mr. Chair.

If I may throw another monkey wrench into the works. Is it possible, if we end up having this CPAC meeting, is it possible to notice a Planning Commission meeting at the same time, then both bodies be in the same meeting so we can kill two birds with one stone. I mean they're both public meetings and half of them are on both, I think, were at one time.

MR. MCOMBER: We didn't have, we didn't have, it was different CPAC, I mean Planning Commission members than there was on that original one. So it is, the old Planning Commission.

DEPUTY CORPORATION COUNSEL: I don't know if I've seen a dual meeting like that before. I'm not sure if the Council's had something like that before. I mean, you'd be talking about posting an agenda for both bodies, each would have to allow their own public testimony, you know, it, it, I would really need to look at that. I just myself am not aware of how that, something like that would work. Logistically it just seems to have some, some complications to it. So I'm not sure what the intention is.

Frankly, the easiest thing would be to, if the intention is to have a CPAC meeting or a Planning Commission meeting is to send something from the Council asking for their comments and get it, get it back. That's something that is available to the Council, rather than--

MR. MCOMBER: The trouble is that some of the Planning Commission members were not, that are on now, were not on the Planning Commission when passed this.

CHAIR WHITE: But the other, the other option I believe would be for us to send it to the individuals that were on the Planning Commission and CPAC at the time that this was passed and ask them to comment not, not, you know not discuss among themselves, but you can, you can talk to one other, but they can provide input directly back to us.

MR. MCOMBER: The CPAC hasn't changed, we haven't done any work, we're still . . . active body. But the Planning Commission has changed since that, that decision was made by them. Different members now on, some of the, some of the members are different on the Planning Commission now.

CHAIR WHITE: Yeah. But again, the reminder is that you can't talk to each other, other than one. You can't have a meeting and, you know, you guys have had to, have had to live under the kind of, the rules that we live with.

So, Mr. Hokama would you like us to defer action on the, on all of it.

COUNCILMEMBER HOKAMA: Chairman to make it very clear as far as where we are, I would withdraw my motion to amend so there would be then only currently the main motion as Mr. Couch presented and Ms. Baisa seconded it. And then depend on how you want to dispose of the main motion, I would then ask for a consideration of recess to a date certain to allow the community ample time to be able to respond with additional comment.

CHAIR WHITE: Mr. Couch, do you feel that April 1, is adequate timeframe within the, within which to generate the information and get responses. And, and, I believe it's fine, as long, as long as we're sending it out to the, if we're providing the document to the, the two committees, then we can also provide it to our own Members, as long as we're posting it on our website. Then we're within the Sunshine Law.

COUNCILMEMBER COUCH: I'll do that. I'll work on it if, if, if I have to, I have some staff, yeah we can do it, I just look staff and they're fine.

COUNCILMEMBER HOKAMA: I'll commit to my time to you.

CHAIR WHITE: Okay, the other question is we can either defer this to our next Council meeting which is at 9:00 in, on April 1, or we can recess this meeting and schedule just this item at 1:30 that same day.

COUNCILMEMBER COUCH: Mr. Chair, in my opinion, I think the recess would be better.

CHAIR WHITE: Okay, I, I tend to agree with that.

Mr. Hokama.

COUNCILMEMBER HOKAMA: And normally I would be in full agreement with that. But since we're working on revisions and proposals, why wouldn't we want our, to hear what our people have to say about those revisions. I mean, I mean, I would say trust me, but I know not everybody is going to trust me.

COUNCILMEMBER COUCH: Mr. Chair, if I may. We could always reopen public testimony, that's not a, that's not a problem.

COUNCILMEMBER HOKAMA: I just wanted them to be able to say that they were not deprived an opportunity. Just like how we made a decision the other night, I, then I want to offer these people the same courtesy.

CHAIR WHITE: Yeah, I think, you bring up a good point and I'm assuming we can take, it's our choice whether we take public testimony. So we will take public testimony at that meeting, beginning at 1:30.

COUNCILMEMBER HOKAMA: Thank you.

CHAIR WHITE: Is that agreeable to everyone? Okay.

COUNCILMEMBER COUCH: Mr. Chair, there is some issues with the Clerk, I think.

DEPUTY COUNTY CLERK JOSIAH NISHITA: A brief recess.

CHAIR WHITE: Sure.

(THE MEETING WAS RECESSED BY THE CHAIR AT 3:06 P.M., AND WAS RECONVENED AT 3:09 P.M., WITH ALL MEMBERS PRESENT, EXCEPT FOR MEMBERS CARROLL, VICTORNO, AND VICE-CHAIR GUZMAN, EXCUSED.)

CHAIR WHITE: This special meeting shall come back to order. Members, after review, we will stand with the recessing of this meeting, reconvening on April 1, at 1:30 in Council chambers and we will allow public testimony at that time and we will also as we always do accept written testimony or calls to offices between now and then.

MR. MCOMBER: We can testify through Riki's office then.

COUNCILMEMBER HOKAMA: Yeah, the Council Services, yeah.

MR. MCOMBER: The Council Services Office.

COUNCILMEMBER HOKAMA: Yes.

CHAIR WHITE: Any, any questions, Members.

COUNCILMEMBER COUCH: Mr. Chair, that being said.

I MOVE TO WAIVE COUNCIL RULE 20 THAT REQUIRES
RECESS WITHIN 14 DAYS.

COUNCILMEMBER WHITE: Thank you for bringing that up.

COUNCILMEMBER BAISA:

SECOND.

CHAIR WHITE: We have a motion to waive the Rules of the Council to allow for a recess longer than 14 days, we have a second from Ms. Baisa.

Any discussion. All those in favor, please signify by saying "aye".

AYES: COUNCILMEMBERS BAISA, COCHRAN, COUCH,
CRIVELLO, HOKAMA, AND CHAIR WHITE.

CHAIR WHITE: Those opposed say "no".

NOES: NONE.

EXCUSED: COUNCILMEMBERS CARROLL, VICTORINO,
AND VICE-CHAIR GUZMAN.

CHAIR WHITE: We have the required votes to waive the Rules, so the recess will on the first of April.

COUNCILMEMBER COUCH: Yeah, Mr. Chair, I, I said Rule 20, if its not Rule 20, whatever the Rule is, yeah. Thank you.

CHAIR WHITE: Okay, any further questions, Members.

I want to thank all of you for your participation and with that we will--

COUNCILMEMBER HOKAMA: We recess.

CHAIR WHITE: --recess.

THE COUNCIL SPECIAL MEETING OF *MARCH 12, 2016* WAS RECESSED BY THE CHAIR AT 3:10 P.M., AND WAS RECONVENED BY THE VICE-CHAIR ON *APRIL 1, 2016* AT 1:31 P.M.

VICE-CHAIR GUZMAN: The recessed special meeting of March 12, 2016 shall now come to order. I'd like to identify the Members that are here today.

We have Bob Carroll.

COUNCILMEMBER CARROLL: Good afternoon, Chair.

VICE-CHAIR GUZMAN: Good afternoon.

Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha, Chair.

VICE-CHAIR GUZMAN: Don Couch.

COUNCILMEMBER COUCH: Aloha, Chair.

VICE-CHAIR GUZMAN: Good afternoon.

And Stacy Crivello.

COUNCILMEMBER CRIVELLO: Aloha, Chair.

VICE-CHAIR GUZMAN: Good afternoon.

And Mr. Riki Hokama.

COUNCILMEMBER HOKAMA: Mr. Chairman.

VICE-CHAIR GUZMAN: Good afternoon.

ROLL CALL

PRESENT: COUNCILMEMBERS ROBERT CARROLL, ELEANORA COCHRAN, DONALD G. COUCH JR., S. STACY CRIVELLO, G. RIKI HOKAMA, AND VICE-CHAIR DONALD S. GUZMAN.

EXCUSED: COUNCILMEMBERS GLADYS C. BAISA, MICHAEL P. VICTORINO, AND CHAIR MICHAEL B. WHITE.

VICE-CHAIR GUZMAN: I'd like to call on Mr. Couch.

COUNCILMEMBER COUCH: Thank you, Mr. Chair. I, there is a motion on the table at this moment to pass "A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.80B.070, MAUI COUNTY CODE, TO ADOPT THE UPDATED LANAI COMMUNITY PLAN". I wish to withdraw that motion.

COUNCILMEMBER COCHRAN: Am I the seconder?

VICE-CHAIR GUZMAN: Any, no--

MEMBERS VOICED NO OBJECTION.

VICE-CHAIR GUZMAN: No objections.

So Members, without objections, the motion shall be withdrawn and we would like to adjourn the recessed meeting of March 12, 2016 so that the, so that we may move into the April 1, 2016 Special Council meeting agenda, agenda which has been posted for today. So at this time, this March 12, 2016 meeting is now adjourned.

ADJOURNMENT

The special meeting of March 12, 2016 was adjourned by the Vice-Chair on April 1, 2016, at 1:32 p.m.

A handwritten signature in black ink, appearing to read "Dennis A. Mateo", written over a horizontal line.

DENNIS A. MATEO / COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII

RECEIVED

P.O. Box 630046
Lanai City, HI 96763
March 8, 2016

2016 MAR -9 AM 11:19

OFFICE OF THE
COUNTY CLERK

Dear Maui County Council Members:

Thank you for travelling to Lanai to hear the community's concerns and comments regarding the Lanai Community Plan. I am testifying in writing as I am out of state.

I am a member of the Lanai CPAC. After a recent Planning Committee meeting at which the Lanai Community Plan was reviewed, a very intelligent Lanai person whom I highly respect said that the Plan was useless. That was disheartening after spending literally years on the Plan. After giving it some thought, two actions or lack of actions would render it useless.

First, if the Plan is not used and implemented as set forth in the Maui County Code. We hold you, the Mayor and the County personnel responsible for proper use and implementation. The previous Plans have generally not been implemented.

Second, it will be useless if it doesn't reflect the intent of the CPAC and the Lanai Planning Commission. Portions of the Plan have been deleted, intent changed and wording added that aren't attributable to specific committees or departments. The community has addressed these changes and been able to undo some of them. However, the last minute changes to Page 9-3 and Appendix 9.2 added the following wording, "Unless specifically prohibited, the uses permitted by zoning and the standards applicable to the typical zoning district apply to the corresponding community plan designations." Planning Committee Chair Don Couch stated that the CPAC and Planning Commission could have put in prohibitions and that there are a few in the Plan. If there are prohibitions, we didn't add them as such. We did not go through the endless hours of Plan development and review with the thought that we had to watch for specific prohibitions. We were not given enough training on zoning to even be aware of the potential uses which conflicted with the Plan designations.

There were statements made at the Planning Committee meetings to the effect that the new language simply states current practice. If so, then there should be no need to put it in the Plan especially at this late stage (end of 2015). Including the verbiage gives the appearance that we were agreeable to anything not prohibited, and that is definitely not the case. The inclusion was tantamount to an ambush. If you insist on keeping this statement in, I request that you provide both the CPAC and Planning Commission extensive zoning training and allow us to reconvene and review the Plan for prohibitions. Absent deleting the language or allowing us to reconvene, the Plan is rendered useless.

As the Lanai Plan is the first, I've included comments on the process at the end of this letter in the hopes of making it easier for subsequent CPACs.

I thank the Planning Department members who worked so hard on our Plan especially Mary Jorgensen and David Yamashita who I think really “get” Lanai. And I echo the beautifully crafted sentiment of the Dedication to those who passed away in and survived the tragic February 26, 2014 plane crash.

Sincerely,

Deborah dela Cruz

COMMENTS ON CPAC PROCESS:

1. Minutes and revised sections need to be provided more quickly so that the issues are still fresh in members' minds.
2. All changes need to be clearly marked so people don't have to do a side-by-side comparison every time there's a new revision. That is a very laborious process, and it's easy to miss changes. It would also be helpful to know who made the changes.
3. CPAC and Planning Commission members should be offered the option of receiving all subsequent revisions in printed form so they can follow the Plan through completion.

NOTE: I realize that the CPAC basically loses its authority once its final draft is sent forward, but it is common courtesy to acknowledge its efforts by implementing 3. and 4. CPAC and Planning Commission members could provide background during Planning Committee and Council reviews.

4. CPAC and Planning Commission members should be offered the option of receiving notifications every time their Plan is being reviewed, e.g., CPAC receive notices of Planning Commission meetings; CPAC and Planning Commission members receive notices of Planning Committee meetings, etc.
5. Develop a system for clearly identifying revisions until the final revision. It is extremely confusing trying to keep track of the sequence of changes.

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OFFICE OF HAWAIIAN AFFAIRS
Administrative Testimony

Testimony of Kamanaʻopono Crabbe, Ph.D
Ka Pouhana, Chief Executive Officer
Maui County Council
Agenda Item

OFFICE OF THE
COUNTY CLERK

A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.80B.070, MAUI COUNTY
CODE, TO ADOPT THE UPDATED LĀNAʻI COMMUNITY PLAN

March 12, 2016

11:00 a.m.

Lānaʻi Senior Center

The Administration of the Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on the update to the Lānaʻi Community Plan (2015). These comments were previously submitted for the December 16, 2015 Maui County Council Planning Committee meeting.

As the constitutionally-established body responsible for protecting and promoting the rights of Native Hawaiians, OHA has substantive obligations to protect the cultural and natural resources of Hawaiʻi for its beneficiaries. Accordingly, OHA is required to serve as the principal public agency in the State of Hawaiʻi responsible for the performance, development, and coordination of programs and activities relating to Native Hawaiians; assess the policies and practices of other agencies impacting Native Hawaiians; and conduct advocacy efforts for Native Hawaiians.¹

OHA appreciates that the proposed updated Lānaʻi Community Plan (2015)² (proposed Community Plan) acknowledges the importance of the rural character and lifestyle of Lānaʻi, and the need to protect the island's natural and cultural resources and subsistence opportunities. OHA offers the following general comments and specific recommendations for amendments and additions³ to the proposed Community Plan on issues of particular concern to the Native Hawaiian community, including Native Hawaiian traditional and customary practices, burials, subsistence practices, water resource protection, and housing.

¹ HRS § 10-3.

² For the purposes of this testimony, OHA has referred to sections as well as page numbers when recommending amendments or additions. Page numbers refer to the proposed updated Lānaʻi Community Plan (2015), rather than earlier drafts.

³ OHA's proposed additions to existing language in the draft Community Plan are underlined while deletions are stricken-through. For the purposes of the suggested amendments, OHA used the most recent proposed draft, the Lānaʻi Community Plan (2015).

Native Hawaiian Traditional and Customary Practices and Subsistence Practices

The health of Lānaʻi's natural and cultural resources, and continued access to these resources, are critical for the perpetuation of traditional and customary practices, such as fishing, gathering, cultivating loʻi, hunting, and caring for burials and sacred sites.

Subsistence activities are an important cultural practice for many Native Hawaiians, particularly for those who live on Lānaʻi. Subsistence harvesting also provides an affordable and essential food source for families and communities. Given the subsistence needs of Lānaʻi's families, land use planning should prioritize the preservation of and access to natural resources.

Accordingly, to ensure the perpetuation of cultural practices and subsistence activities on Lānaʻi, and to more fully recognize the constitutional, statutory, and judicial protections for traditional and customary practices within in the proposed Community Plan, OHA respectfully offers the following comments and recommendations.

- A. In order to emphasize the continued importance of natural and cultural resources and Native Hawaiian cultural practices and practitioners, OHA recommends that the following be added to Chapter 5, section A, Existing Conditions, on page 5-2:**

"Today, numerous Native Hawaiian traditional and customary practices, including fishing, gathering, cultivating loʻi, hunting, caring for burials, and accessing sacred and religious sites, continue to be practiced on Lānaʻi. The health of Lānaʻi's natural and cultural resources, and access to these resources by Native Hawaiian practitioners, mauka to makai, is critical to the perpetuation of Native Hawaiian culture."

- B. To maximize the Community Plan's utility, OHA recommends including references to the constitutional, statutory, and judicial bases for the protection of Native Hawaiian traditional and customary practices, including the obligations of State and County agencies to reasonably protect Native Hawaiian traditional and customary rights, by inserting the following language (along with footnotes) in Chapter 5, section A, to read as follows:**

"In the past several decades, the rights of Native Hawaiians, particularly relating to access and gathering, have been extended and clarified. State and county governments and agencies have obligations to protect the reasonable exercise of traditional and customary practices of Native Hawaiians, to the extent feasible. Relying on the rights recognized in key constitutional and statutory provisions, as well as court decisions,ⁱ the Hawaiʻi Supreme Court established an analytical framework for State and county agencies to follow when considering land use and development projects.ⁱⁱ Under this framework, agencies must identify 1) the scope of valued cultural, historical, and natural resources in the area, including the extent

to which traditional and customary rights are exercised; 2) the extent to which these resources will affect or be impaired by the proposed action; and 3) the feasible action, if any, to be taken to reasonably protect native Hawaiian rights, if found to exist.

ⁱ See, e.g., HAW. CONST. ART. XII SEC. 7, HRS §§ 1-1, 7-1; *Ka Pa'akai o Ka 'Āina v. Land Use Comm'n*, 94 Hawai'i 31 (2000); *Pele Defense Fund v. Paty*, 73 Haw. 578 (1992). For additional information, see also DAVID M. FORMAN & SUSAN K. SERRANO, HO'OHANA AKU, A HO'OLA AKU: A LEGAL PRIMER FOR TRADITIONAL AND CUSTOMARY RIGHTS IN HAWAII (2012), available at <https://www.law.hawaii.edu/sites/www.law.hawaii.edu/files/content/Programs%2C Clinics%2CInstitutes/Ho%27ohana%20Aku%20Final.pdf>.

ⁱⁱ See *Ka Pa'akai o Ka 'Āina v. Land Use Comm'n*, 94 Hawai'i 31 (2000); see also *Pele Defense Fund v. Paty*, 73 Hawai'i 578 (1992); see also *Public Access Shoreline Hawai'i v. Hawai'i County Planning Comm'n*, 79 Hawai'i 425 (1995)."

C. OHA recommends the following policies in Chapter 5, section C, on page 5-4, be amended, to read as follows:

- Policy 7: "Support access for subsistence hunting, fishing, and gathering. Ensure appropriate public access is provided to the shoreline, public trails and hunting areas, in a manner that protects natural and cultural resources and respects cultural practices."
- Policy 8: "Support the protection of native Hawaiian rights customarily and traditionally exercised for subsistence, cultural, and religious purposes in accordance with Article XII, Section 7, of the Hawai'i State Constitution, HRS sections 1-1 and 7-1, and Hawai'i law-court decisions."
- Policy 9: "Require development to mitigate their impacts on historic, cultural, natural, subsistence, and scenic resources."
- Policy 10: "Protect scenic roadway views and significant view corridors and viewsheds. Protect significant views of ridgelines and hill-slopes to maintain open space character. Retain significant vistas associated with archaeological features and culturally significant areas."

D. OHA recommends highlighting the impacts of erosion on natural, cultural, and subsistence resources by amending Issue 2 in Chapter 3, section B, on page 3-3, to read as follows:

"Erosion impacts water quality by causing excessive sediment to enter surface and ocean waters, which in turn negatively impacts the natural, cultural, and subsistence resources found in reefs and coastal waters. In addition, discharges of

chemicals and fertilizers from golf courses, households, businesses, and farms may increase the amount of pollutants found in the soil and water."

E. OHA recommends that the following policies be added to Chapter 3, section C, on page 3-4, to read as follows:

- "In managing the negative and adverse impacts of feral ungulates and invasive species, simultaneously recognize Native Hawaiian access and gathering rights and the importance of subsistence activities."
- "Support appropriate access to the shoreline."

F. OHA recommends that the following policy be added to Chapter 7, section C, on page 7-5, to read as follows:

"Ensure that watershed protection and other conservation measures, including fencing, facilitate Native Hawaiian access rights related to subsistence activities and traditional and customary practices."

G. OHA recommends adding the following policies to the indicated chapters, in order to ensure appropriate evaluation of the impacts of land use changes to natural and cultural resources, to read as follows:

- Chapter 7, section C, on page 7-22: "Minimize the impact transportation system development and maintenance will have on natural and cultural resources, cultural practices, and Native Hawaiian burials."
- Chapter 8 section C on page 8-2: "Minimize the impact of public and recreational facility improvement and expansion will have on natural and cultural resources, cultural practices, and Native Hawaiian burials."
- Chapter 9, section C, on page 9-11:
 - "Evaluate the impact public utility facilities development and land use changes will have on natural and cultural resources, cultural practices, and Native Hawaiian burials."
 - "Consult with and solicit input from community members, including community members with generational knowledge, early and often about how to minimize the impact of proposed changes to the use of land on cultural practices, cultural sites, and culturally significant areas, including burials."

Wai (Water)

The importance of water to the Native Hawaiian people is captured in the ‘ōlelo no‘eau, “Ola i ka Wai (Water is Life).” Traditional Hawaiian management of this precious resource assured mauka to makai stream flow, which provided sufficient water for food production, drinking water, native stream life, healthy estuaries, and ground water recharge. Groundwater sources, such as springs and anchialine ponds, were highly respected and cared for. Today, access to and proper management of water continues to be necessary for a thriving Native Hawaiian people and culture. The health of Lāna‘i’s fishponds, limu, and nearshore and estuarine environments depend upon sufficient groundwater discharge. Decreases in the levels or quality of discharge from over withdrawal may have devastating impacts to marine resources, as well as the cultural and subsistence practices that depend on these resources.

Pursuant to the Hawai‘i Constitution, Article XI, sections 1 and 7, water is a public trust resource, held in trust by the State for the benefit of the people, for both present and future generations.⁴ Recent court decisions have affirmed that state and county permitting agencies have affirmative and independent obligations to ensure that our public trust water resources are protected and used for the public benefit. This means that traditional and customary practitioners, domestic users, the Department of Hawaiian Home Lands, appurtenant right holders, and the environment should receive priority consideration in the decisions that may affect the allocation of public trust water resources.

OHA notes that the proposed Community Plan clearly recognizes that Lāna‘i has limited water resources, and that new growth will depend upon the development of alternative water resources.⁵ In order to better ensure that future land use changes take into consideration the county and state’s legal obligations and responsibilities relating to water as a public trust resource, OHA respectfully recommends the following amendments and additions.

A. In order to explicitly recognize water as a public trust resource, OHA recommends that the following is added to the Existing Conditions section of Chapter 7.1 on Water, on page 7-3, to read as follows:

“Pursuant to the Hawai‘i Constitution, Article XI, sections 1 and 7, water is a public trust resource, held in trust by the State for the benefit of the people, for both present and future generations. Traditional Hawaiian management of this precious resource provided sufficient water for food production, drinking water, native

⁴ See, e.g., HAW. CONST. ART. XI SECS. 1 & 7, ART. XII SEC. 7; HRS §§ 1-1, 7-1, 174C-101; HRS CHAPTER 174C; *In re Water Use Permit Applications*, 94 Hawai‘i 97, 9 P. 3d 409 (2000) (*Waiāhole I*); *Ko‘olau Agricultural Co., Ltd. v. Comm’n on Water Res. Mgmt.*, 83 Hawai‘i 484, 927 P.2d 1367 (1996); *Reppun v. Bd. Of Water Supply*, 65 Hawai‘i 531, 656 P.2d 57 (1982).

⁵ OHA notes that the proposed Community Plan references a water desalination facility as well as other alternatives to pumping from the aquifer. As reflected in the updated Community Plan, OHA emphasizes the importance of exploring alternative water sources to avoid over pumping Lāna‘i’s aquifer .

stream life, healthy estuaries, and ground water recharge. The health of Lānaʻi's streams and nearshore and estuarine environments depend upon sufficient freshwater discharge. Decreases in the levels or quality of discharge from over withdrawal may have devastating impacts to marine resources, as well as the cultural and subsistence practices that depend on these resources."

B. OHA recommends that the following policies be added to Chapter 7.1 on Water, section C, page 7-5, to read as follows:

- "Recognize that water is held in public trust by the State, for the benefit of the people. Public trust purposes, which receive priority over private commercial uses, include domestic uses, Native Hawaiian and traditional and customary rights, appurtenant rights, environmental protection, and reservations for the Department of Hawaiian Homelands."
- "Expanded withdrawal from Lānaʻi's aquifer may have a significant detrimental effect on natural, cultural, and subsistence resources."

C. OHA recommends that the following sentence be added to the end of section A on Existing Conditions of Chapter 7.6 on Stormwater Drainage, page 7-27, to read as follows:

"Stormwater runoff and erosion can negatively impact soils, fishponds, wetlands, coastal waters, and reefs. Siltation of reefs and coastal waters can have detrimental effects on fish, limu, and other ocean resources upon which the Lānaʻi community depends for subsistence fishing, gathering, and other cultural practices."

Housing

OHA notes that the proposed Community Plan includes significant areas for proposed land use changes, much of which will permit residential housing (in the rural and mixed use residential land use designations). As indicated by a recent study by the Department of Business, Economic Development and Tourism (DBEDT), Hawaiʻi's population has grown more quickly than Hawaiʻi's housing stock, and housing prices in the state reached a record high in 2014.⁶ This increase in prices makes housing less affordable for residents. OHA hopes that increases in housing on Lānaʻi will provide affordable housing for Lānaʻi's residents. One strategy to address the lack of affordable housing on Lānaʻi is the proposed Lānaʻi City affordable housing project, which is planned to include 372 units.

⁶ DBEDT, RESEARCH AND ECONOMIC ANALYSIS DIVISION, MEASURING HOUSING DEMAND IN HAWAII 2015-2025 7, 15 (2015) available at <http://files.hawaii.gov/dbedt/economic/reports/2015-05-housing-demand.pdf>.

March 12, 2016
Page 7

Thank you for the opportunity to provide comments on the proposed updated Lānaʻi Community Plan. OHA welcomes discussion on these issues, and would be happy to provide additional information or background material related to the recommendations above. Should you have any questions, please do not hesitate to have your staff contact Jessica Freedman at (808) 594-1779 or via e-mail at jessicaf@oha.org.

Jim Smith
99 Kapuai Road
Haiku, Maui, Hawaii 96708

March 12, 2016

Chairperson Michael White and
Members of the Maui County Council
200 S. High Street
Wailuku, Maui, Hawaii 96732

TESTIMONY: Update Lanai Community Plan

Dear Chairperson White and Members of the Council,

My name is Jim Smith and I have served on a Citizen Advisory Committee for the Haiku Area. We provided recommendations to update an existing plan in the mid-1990's. It is a labor intensive endeavor and requires support from the Department of Planning, and not its management.

In my review of documents related to the Lanai Update, I am astounded by the treatment given appointed members of that CAC based upon changes made by this Council. They were treated like children, by technical experts who conducted a series of "charades" to position them into making the recommendations that appeared predetermined. And yet they prevail.

It seems they did not fail their duty to provide this Council with independent advice. This independent view is necessary and why the Charter requires CAC appointment and advice.

Still, the update you consider is terribly flawed. Please consider Chapter 9 Land Use, C. Goal and Policies, Land Use Policies at policy 10 page 9-12 states "Ensure all lands are zoned and zoning standards are consistent with community plan policies and land use designations". But Community Plans established boundaries, not designations.

This failure to distinguish between designation and boundary advances the cause of real estate sales known as form based zoning, that negates land use regulation. In effect it creates dysfunction shifting administration to a planning consultant who may occupy a public office. This update creates dysfunction.

I request that you refer this matter back to committee on the basis that it creates internal inconsistency that leads ultimately to dysfunction. This requires reflection and reconsideration. This Council has the integrity to make this happen, should it find just cause. Hope of course may be a thing of feathers and not votes.

Thank you

Signed: Jim Smith
03_12_16